DOCKET NO: UWY-CV-18-6046436-S	:	SUPERIOR COURT
ERICA LAFFERTY, ET AL.,	:	COMPLEX LITIGATION DOCKET
VS.	:	AT WATERBURY
ALEX EMRIC JONES, ET AL.	:	NOVEMBER 3, 2021
DOCKET NO: UWY-CV-18-6046437-S	:	SUPERIOR COURT
WILLIAM SHERLACH,	:	COMPLEX LITIGATION DOCKET
VS.	:	AT WATERBURY
ALEX EMRIC JONES, ET AL.	:	NOVEMBER 3, 2021
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REPLY IN SUPPORT OF MOTION TO RECUSE JUDGE BELLIS

The issue before the court is whether a reasonable person would question Judge Bellis' impartiality on the basis of all the circumstances of this case. Resolution turns on whether a reasonable person with full knowledge of the proceedings would harbor significant doubts about Judge Bellis' impartiality so that they would disqualify her based on the mere appearance of bias. See Tracey v. Tracey, 97 Conn. App. 278, 285 n.6 (2006). Plaintiffs anchor their memorandum in opposition to this standard and then completely abandon it in their argument. This should come as no surprise as over the course of this litigation plaintiffs routinely employ misdirection in arguments only to rely on bias against the defendants to carry the day.

Characterizing the defendants' motion to recuse as "merely a collateral attack on rulings," is an example of this misdirection. Defendants, in their initial motion to recuse, directly state "that

adverse rulings, alone, provide an insufficient basis for finding bias even when those rulings may be erroneous." DN 519 at 21-22. Defendants go on to argue that it is the process employed to reach these rulings—not the adverse rulings alone—that creates the perception of judicial bias. Despite this, plaintiffs respond to strawman arguments of their own creation by attempting to recast the defendants' arguments as simply attacks on adverse rulings.

This legal sleight of hand is also apparent in the way the plaintiffs vacillate over the appropriate time period to assess the appearance of judicial bias. Plaintiffs argue from both sides of their mouth. From one side that "[t]he Jones defendants' Motion to Recuse concerns mainly matters that occurred over two years ago," and that knowing of these "biases for years and do[ing] nothing shows . . . that the Motion to Recuse is frivolous." DN 541 at 15. And then from the other side that "[c]ourts should determine questions as to the appearance of impropriety or bias not by considering what a straw poll of the partly informed man-in-the-street would show," but instead "should examine the record, facts, and the law," to determine "whether a reasonable person, . . . fully informed of the facts and circumstances" would question the court's impartiality. DN 541 at 2. This forked tongue argument attempts to distract from the reality that the strong appearance of bias created by Judge Bellis' rulings prior to the 18 June 2019 sanction order carried over when this matter returned to her courtroom on 14 April 2021. Moreover, plaintiffs claim that the motion to recuse includes matters that occurred over two years ago ignores the reality that any action in the trial court lie dormant for much of the duration of that two years. Further, the fact that Defendants did not seek recusal from the first opportunity should demonstrate that this motion is not brought lightly. With each matter that came before her, Defendants hoped the Court would try to *appear* fair and just. This has not happened.

The grand finale to plaintiffs' legal illusion is their attempt to examine each ground raised in the defendants' motion to recuse in isolation, finding that each on its own cannot create the

appearance of bias. The defendants never asserted that Judge Bellis' bias manifests in one particular ruling. Rather, the whole is more than the sum of its parts. Judge Bellis demonstrated a constant bias against the defendants in the decision-making process—or rather lack thereof—throughout the course of the proceedings. Unable to respond to the obvious appearance of bias created by examining the record as a whole, plaintiffs are forced to saw the record into pieces and hope to distract the court from the truth—that fair judgment requires a willingness to hear and evaluate the arguments of each side before executing judgment. The court has repeatedly failed to do so. Therefore, Judge Bellis must be disqualified from this matter.

I. The Process Judge Bellis Employed in Making Rulings, Adverse or Otherwise, Created the Appearance of Bias

The factual background in the plaintiffs reply asks this court to stand in the shoes of the "partly informed man-in-the-street" by reducing the history of this case to an approximately three-page block quote lifted from the Connecticut Supreme Court's 2019 summary of the case. Plaintiffs go on to characterize the 28-page affidavit and 418 pages of supporting exhibits submitted by the defendants in support of the motion to dismiss as reframing "a few incidents while ignoring the full history of the case." DN 541 at 3. Plaintiffs do so to avoid responding to the defendants' argument that throughout these proceedings Judge Bellis employed a decision-making process designed to deny the defendants a meaningful opportunity to be heard.

A reasonable person, fully informed of the facts and circumstances underlying the grounds on which disqualification was sought, would be aware of the following:

- As of the 13 March 2019 hearing the defendants' ability to have their special motion to dismiss heard depended on their complying with the court's discovery orders. DN 520 at 3.
- At the 10 April 2019 hearing Judge Bellis stated that the issue is whether there's

been substantial good faith compliance or not such that the defendant should be allowed to pursue their special motion to dismiss. After plaintiffs were allowed to raise their concerns regarding discovery, Judge Bellis stated "I don't see how this is not substantial compliance," and plaintiffs then conceded that "it's apparent from the Court's comments that the Court is satisfied there is at least substantial compliance." DN 520 at 6. Plaintiffs then raised the affidavit issue as a new and distinct ground for sanctions. DN 520 6-8. In response Judge Bellis stated she would hold a hearing on the evidentiary issue before ruling, but that she thought the defendants substantially complied with discovery orders. DN 520 at 7-8.

- At the 22 April 2019 hearing Judge Bellis invited the plaintiffs to use the affidavit issue as an additional basis to sanction the defendants. The plaintiffs declined, indicating there was insufficient information to indicate culpability on the part of the defendants. Despite previously ordering a hearing on the issue and the plaintiffs indicating that without a hearing they lacked information necessary to take a position, Judge Bellis pressed the plaintiffs to take a position without a hearing, which they declined to do. DN 520 at 8-10.
- At the 7 May 2019 hearing Judge Bellis began by stating "I've seen enough of it at this point to afford the defendants the opportunity to pursue their special motion to dismiss." DN 520 at 10. Plaintiffs, seeing their opportunity to deny the defendants their special motion to dismiss slip away, then claimed that the Defendant's had not produced signed interrogatory responses. Almost immediately, Judge Bellis, **without fully comprehending the issue or inquiring the position of the Jones defendants**, stated, "this is news to me. So here's what I would say on that. I now retract my prior comments that there has been substantial compliance, good-faith,

substantial compliance." DN 520 at 11. Once Judge Bellis determined that the plaintiffs were asking for drafts of interrogatory responses, she ruled they were not entitled to these items, but never corrected her contradictory statements regarding the defendants' discovery compliance. DN 520 at 11.

- At the 5 June 2019 hearing Judge Bellis ruled that the defendants fully and fairly complied with discovery. However, after permitting the plaintiffs to argue 46 transcript pages worth of objections, Judge Bellis would not permit defendants to make a record regarding their own requests for discovery. DN 520 at 11-14.
- Shortly after the 5 June 2019 hearing the defendants discovered that they were the victims of 12 distinct acts of cyber-crime involving a child pornography email scam; the FBI coordinated their investigation regarding this attack on the defendants via plaintiffs' counsel; and Alex Jones reacted on-air to all of this over two broadcasts. DN 520 at 14-16.
- At the 18 June hearing plaintiffs asked for a briefing schedule so they could attempt to use these events to sanction the defendants. Judge Bellis denied this request, abandoning the well-established decisional pathways of (1) briefing the issue and (2) having a meaningful hearing. Put on the spot, plaintiffs chose to not discuss the actual content of the broadcast, instead arguing that sanctions were appropriate based on (1) "Pizzagate;" (2) the prior issues with discovery compliance; and (3) their assertion that the defendants' apology during the 15 June 2019 broadcast was insufficient. DN 520 at 17-18. Judge Bellis requested the defendants begin by addressing the nature of their apology and permitted counsel to get two full sentences out before challenging the characterization of the apology. When the defendants attempted to do so, and despite the fact that she previously

denied a request for briefing and a hearing, Judge Bellis interrupted stating that in order to do so they would need to put on evidence in that regard. DN 520 at 18. Finally, despite stating earlier in the hearing that she had done her own research and could not find a case that came close to the issue before the court, Judge Bellis produced a case justifying sanctions based on a different issue and relied on it as a basis for denying the defendants' special motion to dismiss. DN 520 at 18-20.

- Following Judge Bellis' order, an unknown individual posted a threat against her online. Judge Bellis acknowledged the threat in a 21 June 2019 order. The only other information related to this threat in the record of this case was when the plaintiffs included it in a briefing to the Connecticut Supreme Court in which plaintiffs concluded, without providing evidence, that the defendants were somehow responsible for the threat. DN 520 at 21.
- Following the appeal of Judge Bellis' order, her high degree of antagonism towards the defendants resumed immediately, as demonstrated by a series of admonitions and rulings, with hyperbolic language, making credibility determinations without any evidentiary hearing, and issuing sanctions for reasons not even suggested by the plaintiffs. DN 520 at 21-28.

Because a reasonable person fully informed of the facts and circumstances underlying the grounds on which disqualification was sought would be aware of the foregoing, the court must consider this history when deciding to recuse Judge Bellis. The Court cannot confine its considerations simply to adverse rulings no matter how much the plaintiffs wish this were the case.

II. The Timing of this Motion Demonstrates the Defendants Faith in the Integrity of the Judiciary and the Hope that Judicial Temperament Would Return

Following the Appeal of the Sanction Order

Plaintiffs argue that if the "defendants truly believed that conduct showed bias, the time to raise those arguments was in June 2019." DN 541 at 15. This argument is based on the plaintiffs' mischaracterization that the defendants must show a single isolated event is the basis for the appearance of bias supporting a motion to recuse. As demonstrated in section I *supra*, the appearance of bias and judicial impropriety grew over the course of the proceedings as the defendants scrambled to satisfy shifting discovery standards and arbitrary threshold requirements, only to be ambushed by judicial whim and caprice in the order denying their special motion to dismiss.

Plaintiffs' argument that the defendants point to matters that occurred over two years ago ignores the reality that any action in the trial court lie dormant for much of the duration of that appeal—approximately 1 year, 9 months, and 27 days elapsed between Judge Bellis sanction order and this matter returning to her courtroom following the appeal and removal. After exercising their right to appeal that order, defendants hopes that they would return to a fair and impartial courtroom were dashed when Judge Bellis immediately threatened the defendants with a referral to the grievance committee. DN 520 at 22-23.

Plaintiffs' reliance on Nat'l Auto Brokers Corp. v. Gen. Motors Corp., for the proposition that the timing of the motion to recuse shows it is frivolous is further evidence of their misdirection. That case involved, "[t]he prior representation of a party by a judge . . . with regard to a matter unrelated to litigation before him." 572 F.2d 953, 958 (2d Cir. 1978). In that case, the Second Circuit held that a court was "duty bound" to deny a frivolous disqualification motion because the sole basis of the motion was the prior representation issue which "had for years been a matter of public knowledge and . . . known to . . . counsel for months prior to trial." Id. at 959. The only relevance this case has to the recusal motion before the court is as evidence of the extent

of the misdirection plaintiffs will employ in their arguments.

Finally, plaintiffs try to bolster the arbitrary and unsupported limits they place on the timing of a recusal motion by arguing that "[t]he Supreme Court held: 'the trial court held a hearing, at which it heard thorough argument on the issue, and at no point during the argument did the defendants request additional time. This satisfies the due process requirement for a meaningful opportunity to be heard.' DN 541 at 12. As described in section I *supra* and in greater detail in the affidavit supporting the recusal motion, this meaningful opportunity consisted of Judge Bellis permitting the defendants two full sentences of argument before stating that their characterization of the issue before the court required an evidentiary hearing which she would not permit. DN 520 at 16-20. The applicable standard governing a recusal motion is not that a higher court decided that a party was afforded the minimum requirements of due process. That the plaintiffs are forced to rely on this argument only bolsters the fact that a reasonable person with full knowledge of the proceedings would question the court's impartiality.

Far from showing it is frivolous, the timing of this motion demonstrates restraint on the part of the defendants and a misplaced hope that a neutral and detached judicial temperament would return to the proceedings.

III. The Whole Is More Than the Sum of its Parts

Plaintiffs' reply attempts to isolate specific rulings adverse to the defendants and argue that each on their own fails to establish the appearance of bias. Plaintiffs frame their argument this way to distract from the fact that it is the record as a whole that creates the appearance of bias.

> The Code of Judicial Conduct requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. The reasonableness standard is an objective one. Thus, the question is not only whether the particular judge is, in fact, impartial but whether a reasonable person would question the judge's impartiality *on the basis of all the circumstances*. . . Even in the absence of actual bias, a judge must disqualify h[er]self in any proceeding in which h[er] impartiality might reasonably be questioned, because the appearance

> and the existence of impartiality are both essential elements of a fair exercise of judicial authority.

State v. Webb, 238 Conn. 389, 460-61, *aff'd after remand*, 252 Conn. 128, *cert. denied*, 531 U.S. 835 (2000) (citations omitted; internal quotation marks omitted; emphasis added). "To prevail on [a] claim of a violation of this canon, the [moving party] need not show actual bias. The [moving party] has met its burden if it can prove that the conduct in question gave rise to a reasonable appearance of impropriety." *Abington Ltd. Pshp. v. Heublein*, 246 Conn. 815, 819-21 (1998).

A reasonable person would look at the record in this case in the context of the underlying facts. On 14 December 2012 a shooting occurred at Sandy Hook Elementary School. This event drew national media attention. This event was "described as a 'tipping point' . . . in a national discussion regarding a broad array of potential solutions to curb gun violence."[1] The politicization of this tragic, but idiosyncratic, shooting occurred almost immediately. Nearly six years later, more than a dozen plaintiffs found themselves at the doors of the state's largest personal injury firm, represented by the son of a Senator who used the tragedy to bolster his political career, ready, willing, and able to wage war on the defendants.

The law under which the plaintiffs sued entitled the defendants to a special motion to dismiss, designed to prevent frivolous litigation from silencing constitutionally protected speech. Immediately, the state's largest personal injury firm inundated defendants with voluminous and expensive discovery requests. Defendants request to define the extent of what "specific and limited" discovery the plaintiffs were entitled to were ignored. DN 520 at 1-2. Defendants struggled to respond to the plaintiffs' requests while simultaneously being denied their counsel of choice – who was well-versed in anti-SLAPP law. Defendants eventually provided enough

[1] See James M Shultz, et al., Disaster Health, "The Sandy Hook Elementary School shooting as tipping point- This Time Is Different," (2013), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5314926/ (last visited 27 July 2021)

discovery so that Judge Bellis stated there had been substantial enough compliance with the courts order to afford the defendants the opportunity to pursue their special motion to dismiss on multiple occasions— 10 April 2019; 7 May 2019; and 5 June 2019. DN 520 at 5-6, 8, 10, 11-14.

Despite this, or perhaps because of it, Judge Bellis continued to add additional hurdles to prevent the defendants from bringing their special motion to dismiss. These hurdles came in sanctions for everything ranging from a broadcast demonstrating outrage for being the victim of a child pornography extortion scam to what was independently determined to be an unintentional mistake in executing an affidavit. At this point, defendants placed their faith in the appellate courts rather than seeking to recuse Judge Bellis. While ultimately unsuccessful, defendants hoped that the time on appeal would restore a neutral judicial temperament at the trial level. Unfortunately, this hope proved misguided as defendants found themselves back under the same cloud of apparent bias and antagonism that they thought they had left behind. Only at this point in the litigation, after exhausting all other avenues to an unbiased and impartial proceeding, did the defendants bring this motion to recuse.

This context matters. The question is not whether Judge Bellis is, in fact, impartial. The question is whether a reasonable person—not necessarily one personally biased by the facts underlying the shooting at Sandy Hook— would question Judge Bellis' impartiality. This inquiry must be made on the basis of all the circumstances, including those detailed above. If based on that inquiry, Judge Bellis impartiality might reasonably be questioned, the law dictates that she must be disqualified. Here, the law demands disqualification because there is an appearance of impartiality that calls into question Judge Bellis' fair exercise of her judicial authority.

CONCLUSION

For all these reasons, defendants respectfully request that the Court disqualify Judge Bellis from this matter and substitute another judge to hear it.

CERTIFICATION OF COUNSEL

The undersigned Counsels for defendants hereby certify that this motion is made in good faith.

Dated: November 3, 2021

Respectfully submitted,
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ORDER

The foregoing motion having been heard, it is hereby ordered: GRANTED/DENIED.

_____ , J.

CERTIFICATION

I hereby certify that a copy of the above document was mailed or electronically delivered on this 3rd day of November, 2021 to all counsel and pro se parties of record and that written consent for electronic delivery was received from all counsel and pro se parties of record who were electronically served including:

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